A

MARY PUSHPAM SAVARIMUTHU

v.

KETUA PENGARAH PERTUBUHAN KESELAMATAN SOSIAL

B

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[CIVIL APPEAL NO: R1-16-30-2004]
26 JULY 2006

C

ADMINISTRATIVE LAW: *Exercise of judicial functions - Jurisdiction - Social Security Appellate Board - Whether lacked jurisdiction to determine invalidity question - Whether decision made by medical board and appellate medical board - Ketua Pengarah, Pertubuhan Keselamatan*
D *Sosial v. Rahim Darus - Employees' Social Security Act 1969, ss. 33(2), 84*

LABOUR LAW: *Social security - Invalidity pension - Application for - Whether employee an invalid - Whether to be decided solely by medical*
E *board and appellate medical board - Whether Social Security Appellate Board has jurisdiction and power to review appeal by aggrieved party over decision of Medical Board or Appellate Medical Board - Ketua Pengarah, Pertubuhan Keselamatan Sosial v. Rahim Darus - Employees' Social Security Act 1969, ss. 33(2), 84*

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The applicant herein applied to Social Security Organisation Board (SOCSO) for invalidity pension under s. 15 of the Employees Social Security Act 1969 ('the Act'). Her application was referred by SOCSO to the Medical Board constituted under the Act. The Medical Board found that the applicant was not suffering from any
G invalidity as envisaged under the Act. She appealed against the said decision to the Appellate Medical Board under s. 33(2) of the Act. The Appellate Medical Board affirmed the decision of the Medical Board. Hence, the applicant's application for invalidity pension was rejected by SOCSO. Aggrieved by the said decision,
H the applicant referred her case to the Social Security Appellate Board, a body established under s. 83 of the Act. Hence, this reference by the Social Security Appellate Board to this court. The issue that arose was whether the Board has the decision to hear cases concerning an invalidity or disablement question, in the
I light of the High Court decision of *Ketua Pengarah, Pertubuhan Keselamatan Sosial v. Rahim Darus.*

Held:

(1) The High Court in *Rahim Darus* had clearly held that under the Act the question of validity was to be decided by the Medical Board and the Appellate Medical Board. The Social Security Appellate Board lacked the jurisdiction to determine the invalidity question. Thus, the Social Security Appellate Board, being an inferior tribunal should have followed and given effect to the decision of the High Court in *Rahim Darus* by declining jurisdiction to hear the applicant's claim for invalidity pension. (para 10)

(2) Under the Act, the administration of the scheme of social security is with SOCSO. The Social Security Appellate Board was constituted only to adjudicate any dispute or claim as stipulated under s. 84 of the Act. Section 84 of the Act does not empower the Social Security Appellate Board the jurisdiction to determine on the issue of invalidity or disablement. The power to determine on the issue of invalidity or disablement under the Act is with the Medical Board. Further, the Act conferred on an aggrieved party a right to appeal against the decision of the Medical Board to the Appellate Medical Board and not to the Social Security Appellate Board (s. 33(2) of the Act). The Act does not provide a further appeal against the decision of the Appellate Medical Board to the Social Security Appellate Board. (paras 11, 12 & 14)

(3) The Social Security Appellate Board has no jurisdiction to hear or determine the question of invalidity or disablement. The jurisdiction is with the Medical Board and the Appellate Medical Board. The Social Security Appellate Board has no power to review or entertain any appeal by an aggrieved party over the decision of the Medical Board or the Appellate Medical Board. (para 16)

[Order accordingly.]

Case(s) referred to:

Ketua Pengarah, Pertubuhan Keselamatan Sosial v. Rahim Darus [2001] 2 CLJ 587 HC ***(refd)***

Legislation referred to:

Employees Social Security Act 1969, ss. 15, 32, 33(2), 35, 36, 48, 50, 83(3), 84, 90

A *For the appellant - Sunil Vijayan; M/s The Chambers of Sunil Vijayan*
For the respondent - K Maniam; M/s Skrine

Reported by Suhainah Wahiduddin

B

JUDGMENT

Raus Sharif J:

C **[1]** This is a reference by the Social Security Appellate Board in accordance with s. 90 of the Employees Social Security Act 1969 ("the Act"). Section 90 of the Act reads:

> 90. A Board may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

D

[2] The Social Security Appellate Board is seeking the determination of this court the following question:

> Whether the Board has jurisdiction to hear cases concerning an
E invalidity or disablement question, in the light of the High Court decision of *Ketua Pengarah, Pertubuhan Keselamatan Sosial v. Rahim bin Darus* [2001] 5 MLJ 689.

[3] The facts leading to this application are these. Mary
F Pushpam a/p Savarimuthu ("the applicant") applied to Social Security Organisation Board (SOCSO) for invalidity pension under s. 15 of the Act. Her application was referred by SOCSO to the Medical Board constituted under the Act. The Medical Board found that the applicant was not suffering from any invalidity as
G envisaged under the Act. She appealed against the said decision to the Appellate Medical Board under s. 33(2) of the Act. The Appellate Medical Board affirmed the decision of the Medical Board. Hence, the applicant's application for invalidity pension was rejected by SOCSO.

H **[4]** Aggrieved by the said decision the applicant referred her case to the Social Security Appellate Board, a body established under s. 83 of the Act. Hence, this reference by the Social Security Appellate Board to this court, in light of another High Court decision in *Ketua Pengarah, Pertubuhan Keselamatan Sosial v. Rahim*
I *bin Darus (supra)*.

[5] In the above case, Rahim bin Darus, who was 50 years old and employed as a plant operator at the material time and who had been medically boarded out on the recommendation of a specialist at the Bagan Specialist Centre, Seberang Prai, had applied to the SOCSO for invalidity pension. In support of his application, he submitted the report by the specialist confirming that he was suffering from thyrotoxicosis with heart failure and was unable to continue in his employment.

[6] Rahim bin Darus's application was referred by SOCSO to the Medical Board which confirmed that Rahim bin Darus was "a patient of CCF and thyrotoxicosis controlled by medication" but did not certify him as suffering from an invalidity. The Appellate Medical Board, upon appeal by the Rahim bin Darus similarly confirmed the diagnosis but was of the view that the same could be controlled with medication. The Appellate Medical Board was also of the view that there was no evidence of Rahim bin Darus suffering of heart failure and that Rahim bin Darus therefore did not suffer from any disability.

[7] Based on the findings of the Medical Board and the Appellate Medical Board, SOCSO rejected Rahim bin Darus's application for invalidity pension. The Social Security Appellate Board, upon appeal being made to it by Rahim bin Darus, decided in favor of Rahim bin Darus. In effect the Social Security Appellate Board decided that Rahim bin Darus was suffering from an invalidity and thus eligible for invalidity pension.

[8] The Director General of SOCSO appealed against the decision of the Social Security Appellate Board to the High Court under s. 91 of the Act. Mohd Noor Abdullah 'J' (as he then was) held that the Social Security Appellate Board had erred in law in deciding that Rahim bin Darus had suffered from an invalidity as it was for the Medical Board and the Appellate Medical Board, and not the Social Security Appellate Board to make such a decision.

[9] Before me, learned counsel for the applicant, Mr. Sunil Vijayan, strongly urged this court to distant itself from the decision in Rahim bin Darus. According to him, the decision in Rahim bin Darus, which was in SOCSO's favor did not have the benefit of opposing argument as Rahim bin Darus, was unrepresented.

A Learned counsel for SOCSO, Mr. K. Maniam submitted otherwise. Basically, he submitted that Rahim bin Darus was rightly decided and this court should decide the same.

[10] Firstly, I am of the view that there is no necessity for the B Social Security Appellate Board to refer the above said question to this court. This is because the High Court in Rahim bin Darus had clearly held that under the Act the question of invalidity is to be decided by the Medical Board and the Appellate Medical Board and the Social Security Appellate Board lacks the C jurisdiction to determine the invalidity question. Thus, the Social Security Appellate Board, being an inferior tribunal should have followed and given effect to the decision of the High Court in Rahim bin Darus by declining jurisdiction to hear the applicant's claim for invalidity pension.

D **[11]** Secondly, notwithstanding the above observation, I am of the view that Rahim bin Darus case was rightly decided. Under the Act, the administration of the scheme of social security is with SOCSO. The Social Security Appellate Board is constituted only to adjudicate any dispute or claim as stipulated under s. 84 of the E Act. The disputes or claims which the Social Security Appellate Board is empowered to decide are:

(i) **Disputes**

F (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution;

(b) the rate of wages or average daily wages of an employee for the purposes of this Act; G

(c) the rate of contribution payable by a principal employer in respect of any employee;

(d) a person who is or was the principal employer in respect H of any employee;

(e) the right of any person to any benefit and as to amount and duration of it;

(f) any direction issued by the Organization under ss. 35 and I 36 on a review of any payment of invalidity pension or dependants' benefits or survivors' pension respectively; or

(g) any other matter which is in dispute between a principal employer and the Organization, or between a principal employer and an immediate employer, or between a person and the Organization or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Board under this Act,

(ii) **Claims**

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(c) claim against a principal employer under s. 48;

(d) claim under s. 50 for the recovery of the value of amount or the benefits received by a person when he is not lawfully entitled thereto; and

(e) any claim for the recovery of any benefit admissible under this Act.

[12] Section 84 of the Act, does not empower the Social Security Appellate Board the jurisdiction to determine on the issue of invalidity or disablement. The power to determine on the issue of invalidity or disablement under the Act is with the Medical Board. Section 32 of the Act provides as follows:

Any question:

(a) whether the relevant accident or disease has resulted in the invalidity; or

(b) whether the relevant employment injury has resulted in permanent disablement; or

(c) whether the extent of loss of earning capacity can be assessed provisionally or finally for the purpose of disablement benefit; or

A (d) whether the assessment of the proportion of the loss of earning capacity is provisional or final for the purpose of disablement benefit; or

(e) in the case of provisional assessment for the purpose of disablement benefit as to the period for which such as an B assessment shall hold good;

shall be determined by a medical board constituted in accordance with the provisions of the regulations, if any, and such question shall hereinafter be referred to as the "invalidity question" or "disablement question", as to the case may be. C

[13] Further, the Act confers on an aggrieved party a right to appeal against the decision of the Medical Board to the Appellate Medical Board and not to the Social Security Appellate Board. Section 33(2) of the Act reads: D

33(2) If the insured person or the Organisation is not satisfied with the decision of the Medical Board, the insured person or the Organisation may appeal, in the prescribed manner, and within the prescribed time, to the Appellate Medical Board constituted in accordance with the provisions of the E regulation.

[14] The Act does not provide a further appeal against the decision of the Appellate Medical Board to the Social Security Appellate Board. In fact the Social Security Appellate Board is F precluded from deciding on the issue of invalidity or disablement by virtue of s. 83 which reads:

(3) If in any proceedings before the Board an invalidity or disablement question arises and the decision of a medical board or appellate medical board has not been obtained on the same and G the decision of such question is necessary for the determination of the claim or question before the Board, the Board shall direct the Organisation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical H board or the appellate medical board, as the case may be.

[15] Clearly s. 83(3) reemphasis the need for the determination of the invalidity or disablement question by the Medical Board and the Appellate Medical Board.

I

[16] Thus, my answer to the question posed by the Social Security Appellate Board is that it has no jurisdiction to hear or determine the question of invalidity or disablement. The jurisdiction is with the Medical Board and Appellate Medical Board. The Social Security Appellate Board has no power to review or to entertain any appeal by an aggrieved party over the decision of the Medical Board or the Appellate Medical Board.